But persons buying stock, in order to bring actions for past wrongful acts of directors, are not favored by courts of equity, or of law. "Such parties are regarded as interlopers, seeking to dispute the rights of innocent holders of stock to their prejudice, and should not be allowed to have or retain injunctions when their rights can be preserved by awarding damages for such injury as they may have sustained." See also, *The Queen* v. *Liverpool, Manchester, &c., Rd.*, 21 L. J., Q. B. 284.

We conclude this branch of the subject under consideration, by affirming the general rule to be, that stockholders have an unquestionable right to alien or dispose of their stock according to their own wishes. By this, however, it is not meant to say that the transfer of stock may not be regulated so as to protect the company and its stockholders against fraudulent transfers of stock, or so as to secure to the company payment by a stockholder desiring to transfer his stock of any debt due from him to the company, whether such debt be an unpaid balance due on the stock he wishes to transfer, or any other debt. For these purposes, a company may require transfers to be registered on its books, and the law on this subject is illustrated by a multitude of authorities. See, amongst others, *Chouteau* v. *Harris*, 20 Mo. 383; *Moore* v. *Bank of Commerce*, 52 Mo. 377; *Sargent* v. *Franklin Ins. Co.*, 8 Pick. 90; *Hibernia Ins. Co.* v. *N. O. Transp. Co.*, 13 Fed. R. 516; *Hazard* v. *National Bank of Newport*, 26 Fed. R. 94; *Robinson* v. *Chartered Bank*, L. R., 1 Eq. 32; and many other decisions may readily be found. But in them the power to *regulate* the transfer of stock is clearly distinguished from the power to *prohibit* such transfer. Reasonable regulation is well established by argument, equity and precedent. Prohibition, on the other hand, is clearly contrary to law and public policy.

ADELBERT HAMILTON.

Supreme Court of Minnesota.

HAMLIN *v.* SCHULTE.

Where a real estate broker is employed to find a purchaser of real estate, but not to execute a contract on behalf of the seller, he is entitled to his commissions where it appears that he has found a purchaser ready, able and willing to complete the purchase, in accordance with the terms agreed upon, between the broker and the owner, although the latter is unable to consummate the sale by reason of his wife's refusal to sign the deed.

ASSUMPSIT brought by real estate brokers to recover commissions for procuring a purchaser of certain real estate of defendant upon the terms set by him. Plaintiffs made a written contract on behalf of the parties to the contract, in which it was provided that the wife should join in the deed, which was read to defendant, and assented to by him. It appeared that she refused to join, and defendant was thereby unable to carry out the contract. All the transactions leading to the agreement were conducted by plaintiffs. The defendant denied his liability, and judgment was entered for him, whereupon plaintiffs appealed.

W. E. Hale, for appellants.

Ueland, Shores & Holt, contra.

VANDERBURGH, J.—It is insisted by the defendant that the complaint does not show that the plaintiffs have earned their commissions, or procured a purchaser ready and willing to take the property upon defendant's terms, because his wife is made a party to the agreement without her authority, and that defendant could only be bound by a contract with himself alone; but we think it was competent for defendant, assuming to act for himself and wife, to employ the plaintiffs and authorize them, as real estate brokers, to procure a purchaser upon the terms alleged to have been authorized or ratified by him, and, among other things, to provide that his wife should join in the contract or deed in order to assure the acquisition of her interest and a clear title. He could make such terms if he chose to do so, whether he was able to comply with them or not, as respects his wife's interest. That would be a matter which would concern him, and not his agents. The plaintiffs were not employed to make the final contract between the parties, but to find a purchaser for the property; and the memorandum made by them may be considered, for the purposes of this case, as in the nature of a proposition submitted to the defendant, including the terms and conditions of the purchase; and, independently of the extent of the agents' authority in the first instance, he might ratify or modify it if, as the final result of the negotiations, it appears that they have procured a purchaser for the property upon the defendant's terms. The complaint should be held sufficient, and the mere fact of his refusal or inability to procure his wife's assent or signature to the deed or contract, ought not, as between him and them, to be held sufficient to defeat the action. It is plain enough, if the complaint be true, that the defendant understood the terms of the contract just as they were understood by the plaintiffs and the purchaser, and that the conditions of the proposed sale required his wife to join in it. It was necessary that the wife should join in order to give the purchaser a good title; and the provision in the contract had respect to the title. And this was the view of the case taken by this court on the former appeal (31 Minn. 488), where it was held that it was no valid ground of objection to a recovery by plaintiffs that the contract required the wife to join,

but it did not then appear that the terms of sale were otherwise in conformity with defendant's instructions.

The rule is well established that the broker is entitled to recover his compensation where a purchaser, procured through his agency, is able, willing, and ready to complete the purchase on the terms mutually stipulated between the parties, although through the default of the seller, or his inability to fulfil the terms on his part, or make a good title, no sale is finally consummated: *Stillman* v. *Mitchell*, 2 Rob. 537; *Holly* v. *Gosling*, 3 E. D. Smith 264; *Chilton* v. *Butler*, 1 Id. 150; *Doty* v. *Miller*, 43 Barb. 529; *Armstrong* v. *Wann*, 29 Minn. 126, and cases cited; *Jones* v. *Adler*, 34 Md. 442; *Phelan* v. *Gardner*, 43 Cal. 306; *Rupp* v. *Sampson*, 16 Gray 401; *Moses* v. *Bierling*, 31 N. Y. 462; *Mooney* v. *Elder*, 56 Id. 240; *Barnard* v. *Monnot*, *42 Id. 205 (3 Keyes); *Lynch* v. *McKenna*, 58 How. Pr. 42; *Koch* v. *Emmerling*, 22 How. (U. S.)

Respondent's main point is that it does not appear that the purchaser was ready and willing to contract with defendant alone, and that he could not ratify an unauthorized contract on behalf of his wife. But these objections go rather to the question of the defendant's ability to fulfil the terms agreed on and contained in the negotiations, and not to the terms upon which plaintiffs were authorized to procure a purchaser. Such was not the contract contemplated here. It must have been in the minds of the parties, principal and agents, and mutually understood, that the wife should join; and we think it is clear that the terms of their employment would be satisfied if they found a purchaser ready and willing to purchase, not merely on the terms agreed as to price and security, but also on the condition that his wife should be bound by the contract. If an executory contract had been made with defendant alone, in which he had stipulated that his wife should join in and be a party to a warranty deed of the property in order to a perfect title, and she should thereafter refuse so to do, the purchaser might refuse to complete the purchase for that reason; and the practical distinction between such a case and the case at bar would appear to be quite insubstantial, as respects the relations of the vendor and his agents, which may properly be determined by the stipulations they make between themselves. If, then, the purchaser in this case was procured upon terms in conformity with which the vendor assumed to be prepared to sell, and stipulated for by himself, he ought not to object, as

against the claim of his agents, that he had no authority to make such terms. Otherwise he would be permitted, not only to disappoint the purchaser, but also deprive them of their compensation, fairly earned, through collusion with his wife, or his inability to persuade her to join in the deed.

Judgment reversed.

In view of the antagonistic positions of the two classes of cases upon the main question in the principal case, as to when a real estate broker has earned, and is entitled to recover, his commission for services rendered, with respect to the sale or attempted sale of real estate, a review of the authorities will not be without interest.

There are two extreme views which have obtained in cases of this nature. One class is to the effect that the broker has earned his commission the moment the property is committed to him for sale, or when it is entered upon his books, and that the owner thereafter has no control over the property, either for the purpose of withdrawing it, or to make sale of it himself, without first paying the broker his commission; certainly not unless he specifically reserves this right. While the second class hold that no commission is due the broker, unless he has actually consummated the sale.

The leading case of *Sibbald* v. *The Bethlehem Iron Co.*, 83 N. Y. 378; s. c. 38 Am. Rep. 441, announces the correct principles which should control future judicial action, in adjusting the rights of the parties, when this question is presented. Here the defendant employed plaintiff, a broker, to sell the steel rails of its manufacture to the Grand Trunk Railroad Co. After various unsuccessful negotiations for a sale, carried on during a period of four months, between that company and plaintiff, during which defendant had fixed its prices several times, upon receipt of a telegram from said company, asking on what terms 1000 tons of defendant's rails would be delivered, plaintiff telegraphed to defendant asking its lowest terms. Defendant declined to fix a price or negotiate further through plaintiff; and the latter thereupon telegraphed to the Grand Trunk Railroad Co. that defendant declined to name a price. Subsequently, a sale was made by defendant to the Grand Trunk through another broker. Upon the trial of an action to recover commissions, the court was requested to charge that defendant had the right, under the circumstances, to refuse to use the services of plaintiff, if the action was taken in good faith, and without intent to deprive him of his commissions. The court so charged, with the qualification, however, that the defendant had no right, acting either in good or bad faith, to avail itself of what plaintiff had done, to make a sale through other agencies. The Court of Appeals held that the qualification was error; that defendant had a right to terminate the agency as he did, and if done in good faith, plaintiff had no right to compensation, although his efforts were of benefit in the subsequent negotiation. The court fully discusses the rules of law controlling brokers' rights to commissions; pp. 381, *et seq.* "The duty he undertakes, the obligation he assumes as a condition of his right to demand commissions, is to bring the buyer and seller to an agreement;" p. 382. His "obligation is fulfilled only when he produces a party ready to make the purchase at a satisfactory price." Several expressions from various courts are set out, and the court concludes: "But in all the cases under all the varying forms of expression, the fundamental and correct doctrine is, that the duty assumed by the broker is to bring the minds of the buyer and seller

to an agreement for a sale, and the price and terms on which it is to be made, and until that is done his right to commissions does not accrue. * * * (p. 383.) It follows, as a necessary deduction from the established rule, that a broker is never entitled to commissions for unsuccessful efforts. The risk of failure is wholly his. The reward comes only with his success. That is the plain contract and contemplation of the parties. The broker may devote his time and labor, and expend his money with ever so much of devotion to the interest of his employer, and yet, if he fails, if without effecting an agreement or accomplishing a bargain, he abandons the effort, or his authority is fairly, and in good faith, terminated, he gains no right to commissions. He loses the labor and effort which was staked upon success. And in such event it matters not that after his failure, and the termination of his agency, what he has done proves of use and benefit to his principal. In a multitude of cases that must necessarily result, he may have introduced to each other parties who otherwise would have never met; he may have created impressions which, under late and more favorable circumstances, naturally lead to and materially assist in the consummation of a sale; he may have planted the very seeds from which others reap the harvest; but all that gives him no claim. It was part of his risk, that failing himself, not successful in fulfilling his obligation, others might be left to some extent to avail themselves of the fruit of his labors."

After citing *Wylie* v. *Marine Bank*, 61 N. Y. 416, as supporting above views, the court suggests the following qualification: "This, however, must be taken with one important and necessary limitation. If the efforts of the broker are rendered a failure by the fault of the employer; if capriciously he changes his mind after the purchaser, ready and willing, and consenting to the prescribed terms, is produced; or, if the latter declines to complete the contract because of some defect of title in the ownership of the seller, some unremoved encumbrance, some defect which is the fault of the latter, then the broker does not lose his commisions. And that upon the familiar principle that no one can avail himself of the non-performance of a condition precedent, who has himself occasioned the non-performance."

Wylie v. *Marine Nat. Bank*, 61 N. Y. 415, may also be considered a leading case. This was an action by a real estate broker to recover commissions, on an alleged sale of defendant's real estate. The broker made several efforts to procure a purchaser, covering a period of about a week, but did not succeed. Defendant sold the property to one not procured by the aid of the broker. There was nothing said about the time in wich the broker was to make sale. It was held that the broker was not entitled to commissions.

The following propositions of law are deduced from the opinion: (1) One who has employed a broker can himself sell the property to a purchaser whom he has produced without any aid from the broker: *Hungerford* v. *Hicks*, 39 Conn. 259. (2) Before the broker can be said to have earned his commission he must produce a purchaser who is ready and willing to enter into contract upon his employer's terms: *Tombs* v. *Alexander*, 101 Mass. 255; *Barnard* v. *Mormat*, 3 Keys 203. (3) The broker must be the *efficient agent* or the *procuring cause* of the sale. The means employed by him and his efforts must result in the sale. He must find a purchaser, and the sale must proceed from his efforts, acting as broker: *McClure* v. *Paine*, 49 N. Y. 661; *Lloyd* v. *Matthews*, 51 Id. 124; *Lyon* v. *Mitchell*, 36 Id. 235; *Briggs* v. *Rowe*, 4 Keys 424; *Murry* v. *Currie*, 7 C. & P. 584; *Wilkinson* v. *Martin*, 8 Id. 5. (4) It is not indispensable that the purchaser should be introduced to the owner by the broker,

nor that the broker should be personally acquainted with the purchaser. But in such case it must affirmatively appear that the purchaser was induced to apply to the owner through the means employed by the broker. If he was the producing cause of the sale, his right to compensation will not be affected by the circumstance that the owner was ignorant of it at the time he entered into the contract with the purchaser: *Sussdorff* v. *Schmidt*, 55 N. Y. 320.

In a recent case in the Kansas City (Mo.) Court of Appeals, *Gaty* v. *Foster*, 18 Mo. App. 639, the court, after approving these cases, especially the limitation stated in the first, observed (p. 644): "By those cases and by a long list of adjudicated cases we understand the law to be that, if the owner of the property employs a broker to sell it, or to find and send to him a purchaser for it, and in the contract of employment prescribes the terms and conditions on which the broker may act in selling or securing a purchaser, and if the broker does not himself sell the property, but does find and send to his employer one who is ready, able and willing to buy the property on the terms and conditions prescribed in said contract, and offers so to do, then the broker has earned his commission and is entitled to it whether the employer accepts the offer or not. The employer cannot impose conditions other than and in addition to the conditions named in the contract, and under such circumstances, so as to prevent the broker from receiving his commission."

A broker claiming a commission must show an employment, and that the sale was made by means of his efforts or agency. His undertaking is to make efforts to procure a purchaser, and if he fails he is entitled to no commissions, unless he has a special contract giving him a right to them whether a sale is effected by him or not. But if the purchaser is found through the instrumentalities of the broker, as where he is attracted to the property by maps, signs and advertisements of the broker, the latter is entitled to his commissions, although the owner makes the sale, and although the purchaser is not introduced to the owner by the broker, and the latter is not personally acquainted with such purchaser: *Sussdorff* v. *Schmidt*, 55 N. Y. 319. The language of the cases is, that the broker must be the "procuring cause" of the sale: *Moses* v. *Bierling*, 31 N. Y. 462; *McClave* v. *Paine*, 49 Id. 561; *Woods* v. *Stephins*, 46 Mo. 55; *Green* v. *Bartlett*, 14 Conn. 681. That is, the sale must be brought about from the acts of the agent though he does not negotiate or consummate the sale: *Stewart* v. *Mather*, 32 Wis. 644; *Cooke* v. *Fisher*, 12 Gray 491; *Lincoln* v. *McClatchie*, 32 Conn. 136; s. c. 10 Am. L. Reg. 634, 638, note; *Stillman* v. *Mitchell*, 2 Rob. 523; as where he gives information to the purchaser, either in person or through agency employed by him, although the sale is completed between such purchaser and the principal without further assistance or knowledge on the part of the broker (*Carter* v. *Webster*, 79 Ill. 435), or where the sale results from the agent's introduction of the principal parties, or by advertisements of the agent: *Earp* v. *Cummins*, 54 Penn. St. 394; *Durkee* v. *Rd.*, 29 Vt. 127; *Burnett* v. *Bouch*, 9 Car. & P. 620. In short, it may be stated, generally, that efforts on the part of the broker which end in a sale will entitle him to his commissions. See article in 22 Cent. L. J., 126–129, by H. C. BLACK, Esq.; also article in 16 Cent. L. J. 442–447, by MURAT W. HOPKINS, Esq.

The efforts of the broker must bring the proposed buyer and seller together: *Fisk* v. *Henerie* (Oregon), 9 Pac. Rep. 322; s. c. 9 West Coast Rep. 172; and if the seller capriciously refuses to complete the sale, the broker can recover his commissions: Id.; *Stewart* v. *Murray*, 92 Ind. 543: *Vinton* v. *Baldwin*, 88 Id. 194; *Love* v. *Miller*, 53 Id. 294.

The following cases will illustrate these rules:

In *Tombs* v. *Alexander*, 101 Mass. 255; s. c. 3 Am. Rep. 349, the defendant employed the broker to sell real estate for a certain compensation, making known to him his title. The broker produced a purchaser, and introduced him to defendant, but no sale was consummated by reason of a defect in defendant's title. The defendant afterwards sold the property to another person at auction, for more than had been offered by the first customer. The broker was denied recovery. In *Fox* v. *Rouse*, 47 Mich. 558; s. c. 11 N. W. Rep. 384, the plaintiff had been employed by defendant, upon specified terms, to effect a sale. He found a purchaser who was ready willing, and able to take the land upon the specified terms. It developed that the land had been sold by another agent, similarly employed as plaintiff. The court in holding that the broker could recover, said, p. 560: "Fox (owner) may have been unfortunate in employing more than one agent, but this was a matter of his own choosing, and until the authority given was revoked, they each had a right to find purchasers and earn their commissions." *Timberman* v. *Craddock*, 70 Mo. 538, was an action on an express contract—$1000 to be paid for effecting exchange of a stock of goods owned by defendant, for real estate in Kansas City. The agent exerted himself and used means to bring about the exchange, but the negotiations were concluded by the parties principal in person. The agent was permitted to recover, as he was the "procuring cause" of negotiations which resulted in the sale. *Tyler* v. *Parr*, 52 Mo. 249, 250, was an action by a real estate agent to recover commission "for procuring exchange of real estate." Defendant placed his land in plaintiff's hands for sale or exchange, and was to pay therefor a certain commission. Plaintiff advertised the land and corresponded with a real estate agent, who represented that he was agent for certain property, and was ready and willing to make the exchange. The agent, at plaintiff's request, called upon plaintiff's attorney and received information concerning the real estate, and the attorney introduced this agent to the defendant. Negotiations were then entered into between this agent and defendant, which resulted in an exchange of land. Plaintiff was permitted to recover. In *Carpenter* v. *Rynders*, 52 Mo. 278, plaintiff, a real estate agent, was employed by defendant to sell a house aud lot for $6000. The evidence conflicted as to contract, but it "tended strongly to show" that plaintiff undertook to sell the property for 2½ per cent. on the price, that plaintiff was to write the deed without charge, and that nothing was to be paid unless plaintiff made a sale. Plaintiff effected a sale, satisfactory to defendant, and $100 was paid to defendant, as part payment, but when deed was about to be made, purchaser found title defective. Defendant afterwards obtained deeds which perfected the title, but in the meantime the purchaser made different arrangements and refused to take the house and lot. The $100 was returned to the purchaser. It appeared that the purchaser would have taken the property at the time, if the title had been good, or if the defendant had perfected it before the purchaser had made different arrangements. The court, in holding that the agent was entitled to recover, remarked: "The plaintiff had done all that could be done by him, and if the contract and sale were defeated by the fault of the defendant, the plaintiff having done everything on his part that could be done, is entitled to his pay. See *Doty* v. *Miller*, 43 Barb. 529; *Topping* v. *Healy*, 3 F. & F. 325. In *Bailey* v. *Chapman*, 41 Mo. 636, WAGNER, J., said, p. 538: "A broker employed to make a sale for a commission, is entitled to pay when he makes the sale according to instructions, and in good faith, and the principal can-

not relieve himself from liability, by a refusal to consummate the sale, or by a voluntary act of his own disabling him from performance." See instructions on page 537, especially plaintiffs. See the dissenting opinion of WAGNER, J., in *Budd* v. *Zeller*, 52 Mo. 245, 246, where the defect in title caused failure to consummate the loan : *Kock* v. *Emmerling*, 22 How. (U. S.) 69. In *Lincoln* v. *McClatchie*, 36 Conn. 136 ; s. c. 10 Am. L. Reg. (N. S.) 634, defendant put in hands of plaintiff, a real estate broker, his house, for sale for $6500—the plaintiff to receive 1 per cent. commission if he sold—the defendant to have the right to sell the house himself, without being liable to a commission, and the broker was not to advertise. The plaintiff entered the house on his books, and in December and January following, advertised the house for sale, on the street upon which defendant's house was located. One G., living on that street, saw the advertisement, and desiring a house near by for a friend, went to plaintiff's office and learned that defendant's house was for sale. G. told this to his friend, who went to defendant direct and purchased the house of him, without seeing the agent. The plaintiff was allowed a recovery, the court holding that the contract that plaintiff was to have no commission if the defendant sold the house, meant a sale to a purchaser found by the defendant, wholly without the plaintiff's procurement. There is a valuable note appended to this case, as reported in 10 Am. L. Reg. (N. S.) 637-638, in which the doctrine of this case is fully approved. The writer, after referring to and stating the two extreme views which have obtained in this class of cases (as above given), says: "The truth seems to lie between these extremes, and in the precise line indicated in the opinion. The broker may pursue his own mode in finding a purchaser ; and there is, probably, an implied understanding, that if the vendor shall withdraw his property, or effect a sale solely on his own account, he may do so, but in that event he may be bound to reimburse any expense the broker may have incurred by advertising or otherwise. But unless he contributed to the sale made by the owner of the property, he is not entitled to commissions. Commissions, *eo nomine*, can only be earned by a complete sale ; the same as freight is the mother of wages, and the completing of the voyage, under ordinary circumstances, is required, in order to demand freight.

A few more cases will be cited to further illustrate these conflicting views.

In *Kimberly* v. *Henderson*, 29 Md. 512, 515, it is said that to be entitled to commissions, the real estate broker should have completed the sale, that is he should have found a purchaser in a situation, and ready and willing to complete the purchase according to the terms agreed on. "The undertaking to produce a purchaser requires of the party so undertaking, not simply to name or introduce a a person who may be willing to make any sort of a contract in reference to the property, but to produce a party capable, and who ultimately becomes the purchaser." Here the person introduced by the broker entered into an agreement to purchase, but failed to consummate it: *Richards* v. *Jackson*, 31 Md. 250, 252, 253 ; s. c. 1 Am. Rep. 49, fully sustains the ruling of the last case. In *McGavock* v. *Woodlief*, 20 How. (U. S.) 221, 227, is the following language : "The broker must complete the sale ; that is, he must find a purchaser in a situation and ready and willing to complete the purchase on the terms agreed on, before he is entitled to his commissions, then he will be entitled to them, though the vendor refuse to goon and perfect the sale." In *De Santos* v. *Taney*, 13 La. Ann. 151, 162, it is held that the right to commission, upon a sale, depends entirely upon the completion of the sale, and the commission is not due until a sale is executed; here there was a misunderstanding between

the agent and the proposed purchaser, as to the payment of taxes, &c., on the property. On rehearing the court said that the broker was not entitled to recover, because of his neglect "to stipulate clearly concerning the taxes," that is, there appeared to have been no "perfect bargain" between the broker and purchaser. The court also said that it was not necessary that the consideration should have passed, but "I consider the brokerage earned as soon as the broker has effected a complete bargain between the parties." See Mr. Justice SPAFFORD'S dissenting opinion.

The doctrine of these cases is that unless the failure to purchase of the person introduced results from the fault of the vendor, the broker is not entitled to commission. In other words, that there must be a complete sale before commissions are earned and payable.

The doctrine of these cases is, obviously illogical and unjust. Why should the broker not be entitled to his commission because he has not performed that which he has not the power to perform? The broker's undertaking is not to make a complete sale. Indeed, this could not be, for he has not the power to make the transfer of the property: *Ryon* v. *McGee*, 1 Am. Law Mag. 351. His right to commission "depends upon his successful performance of the service and upon nothing else:" *Barnard* v. *Monnat*, 1 Abb. Ct. App. Dec. (N. Y.) 108, 109. "The duty of the broker consisted of bringing the minds of vendor and vendee to an agreement. He could do no more. He had no power to execute a contract, to pay the money for the one side, to convey the land on the part of the other, or to compel the performance by either of their duties. The plaintiff produced a purchaser, ready and willing to accept the terms of the defendant and able to perform the obligation on his part. He had then earned his commission, and it would be a singular conclusion of the law, that the refusal of the employer to complete the bargain should destroy his right to them:" Id.

In *McClave* v. *Paine*, 49 N. Y. 561, 563, defendant employed plaintiff, a real estate broker, to negotiate sales of three parcels of land, at a specified price for each. Plaintiff effected a sale of one piece for which he received his commission. Subsequently, defendant sold one of the remaining parcels, upon the same terms that he had instructed plaintiff to sell it; but plaintiff took no part in the sale and gave no information to the purchaser concerning it. So far as appears, he knew nothing about it until after the sale. In a suit for commissions he was denied a recovery (p. 563): "To earn his commission the broker must be an efficient agent in or the procuring cause of the contract. His commission is earned by finding a sufficient purchaser, ready and willing to enter into a valid contract for the purchase upon the terms fixed by the owner, and having introduced such a one to the owner as a purchaser, is not deprived of his right to commission by the owner negotiating the contract himself."

In *Lane* v. *Albright*, 49 Ind. 275, 278, 279, the owner proposed to the real estate agent by letter, that if the latter would find a purchaser for his lands—the terms of the sale being given—the owner would pay him $200, "if you (agent) let me (owner) know soon." This letter was dated Feb. 27th 1873. The agent advertised and talked with several parties about the land, but the owner sold the land himself, March 21st, the same year, less than one month after his contract. The agent was permitted to recover. The court said: "The appellant (agent) performed all that he was required to do by the contract, and was prevented by the appellee (owner) from selling the land. The appellee disabled himself from carrying out the contract of sale made by appellant. The fact that the appellee had authorized the appellant to sell his land did not deprive himself of

the power of selling it, but he could not thereby avoid the liability to appellant." It also appears from the report of the case that the owner sold the land at a reduced price "to avoid the payment to the agent of the sum agreed upon."

An agent cannot demand commissions on a sale not accomplished by him within the time limited by the contract, especially where the sale is consummated, after the expiration of the time limited, through the interposition of a third party, and with new incidents: *Beauchamp* v. *Higgins*, (Mo.) 3 Wes. Rep. 200.

EUGENE MCQUILLIN.

St. Louis, Mo.

Supreme Court of Indiana.

LANG *v.* STRAUS.

A certificate of deposit contains, by implication of law, a promise to repay the depositor his money, and is a written contract for the payment of money.

The law is a factor in all contracts, and what the law implies is as much a part of the contract as the words written therein.

Parol evidence is not admissible to vary the legal obligation of a contract implied from the language employed by the parties.

ELLIOTT, J.—The instrument declared on is a contract. It is a written contract. It cannot be contradicted or varied by parol evidence. The law enters into it as a silent factor, and the obligation implied by law from the language employed is as much part of the contract as though what the law implies had been fully expressed in words. Where there is an express contract, there can be no implied one. An express written contract contains the only competent evidence of the agreement of the parties. There is here an express written contract, and therefore there is no implied one. But this written contract is to be given legal effect, and to give it effect the courts must consider it as embodying all the legal obligations implied from its language. These obligations, we repeat, are part of the written contract. The law imported into the contract does not create an independent agreement, but makes the instrument express the full agreement of the parties. All the words found in a contract are to have a meaning attributed to them, and are not to be thrust aside. We cannot, therefore, disregard the words, found in the contract before us, "on deposit, in national currency." We know that the words "national currency" denote money, and we know, therefore, that those words, taken in connection with the words "on deposit," mean that the appellees had received a deposit in money from the appellant's testator: *Phelps* v. *Town*, 14 Mich. 373. We know, also, that the law, as a factor, is an essential part of the